IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.942 OF 2005
IN
NOTICE OF MOTION NO.2808 OF 2005
IN
SUIT NO.2543 OF 2005

Jamnadas Dharmashi Rakhasiya — Appellant
vs.
Damayantiben Nenshibhai Shah — Respondent

Mr.Bhavin Bhatia i/b.Mr.Bipin Joshi for the appellant.

Mr.Sunil Gangan i/b.M/s.RMG Law Associates for the respondent.

**CORAM : R.M. LODHA &**
**D.G. KARNIK, JJ**.

**DATED : 19th December 2005**

**P.C.**

Though the appeal is not on board for hearing and the matter has been placed before us for consideration of notice of motion, in the light of the submission of the learned counsel for the respondent (original plaintiff) that the original plaintiff seeks leave to withdraw the notice of motion no.2808/2005 taken out before the learned Single Judge whereupon the impugned order came to be passed, we called out the appeal for final hearing itself.

2. The learned counsel for the respondent submits that some new facts have come to the notice of the original plaintiff and that necessitates withdrawal of notice of motion no.2808/2005 that was made before the learned Single Judge. He prays that liberty may be granted to the original plaintiff to take out fresh notice of motion for appropriate reliefs.

3. In the light of the submissions of the learned counsel for the respondent, we are satisfied that merits of the appeal need not be examined by us and the appeal may be disposed of by the following order:

(i) Notice of Motion No.2808/2005 taken out by the original plaintiff (respondent) in Suit No.2543/2005 is allowed to be withdrawn.

(ii) As a result of withdrawal of notice of motion no.2808/2005, the impugned order dated 29th September 2005 does not survive and is rendered ineffective.

(iii) Liberty to the original plaintiff to take out fresh notice of motion for appropriate interim reliefs. It is observed that any such notice of motion shall be considered on its own merits uninfluenced by withdrawal of earlier notice of motion no.2808/2005.

. No costs.

**(R. M. LODHA, J.)**

**(D. G. KARNIK, J.)**